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CITY OF SANTA BARBARA
CITY CLERK'S OFFICE

February 14, 2011

Mayor Helene Schneider
Council Member Grant House
Council Member Bendy White
Council Member Dale Francisco
Council Member Frank Hotchkiss
Council Member Randy Rowse
Council Member Michael Self
City of Santa Barbara
735 Anacapa Street
Santa Barbara, CA 93101

RE: Letter of Appeal From Denial of Application for a
Medical Marijuana Dispensary Permit by Patrick Fourmy
for the Compassion Center of Santa Barbara County --
Staff Hearing Officer Resolution No. 062-10
(December 15, 2010); Planning Commission Decision
(February 3, 2011)

Dear Mayor Schneider and Members of the City Council:

This is an appeal from the decision of the Planning Commission on February 3, 2011, denying an appeal from the decision of a staff hearing officer on December 15, 2010 which denied to the Compassion Center of Santa Barbara County -- the oldest medical marijuana dispensary in Santa Barbara, and the only dispensary in California to have registered nurses on staff to meet the needs of seriously ill patients -- a permit to continue its operations. .

I. INTRODUCTION.

The Compassion Center of Santa Barbara County is the oldest medical marijuana collective in Santa Barbara, and operates the only medical marijuana

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dispensary in California that has licensed medical professionals as collective staff members. The Compassion Center has an 11-year record of serving seriously ill members of the community, many with conditions such as cancer and AIDS. The Compassion Center has the support of medical doctors and the good will of its long-term neighbors. It is the very opposite of a nuisance.

It is undisputed that the continued operation of the Compassion Center serves the public interest and the needs of the community.

Despite the uncontested reality that the Compassion Center is beneficial to the community, the staff hearing officer denied the Compassion Center's application for a Medical Marijuana Storefront Collective Dispensary permit under Santa Barbara Municipal Code section 28.80.070. That section sets forth twelve criteria that the staff hearing officer shall "consider" in making her decision. Here, the staff hearing officer based her decision erroneously on a single criterion, denying the application solely "in consideration of Issue [criterion] 12." That issue relates to whether, as the City Attorney has asserted, the Compassion Center had discontinued its operations for more than 30 days in 2007-2008, allegedly in violation of a prior ordinance.

It should be noted that, although this is an appeal from a decision of the Planning Commission on February 3, 2011, and the due date of this letter of appeal is February 14, 2011, as of the day before that due date, no written decision of the Planning Commission had been issued. Accordingly, this letter will address the basis for the staff hearing officer's decision, which forms the basis for the Planning Commission's decision.

As this letter will show, the staff hearing officer's determination that the permit should be denied based on the Compassion Center's supposed discontinuance of operations at some point in the past is without any factual basis, and legally erroneous, for several independent reasons. These include:

1. The staff hearing officer erroneously denied the permit despite the complete absence of any evidence that the Compassion Center actually had discontinued operations for more than 30 days.

2. Because the alleged violation of the prior ordinance assertedly took place *before* the effective date of the prior ordinance, that ordinance cannot be applied to deny a permit to the Compassion Center.
3. Criterion 12 was plainly misapplied by the staff hearing officer.
4. The staff hearing officer misunderstood and misapplied Section 28.80.070.
5. The Compassion Center did not discontinue operations for 30 days or more between November 2007 and March 2008, as erroneously alleged, and has remained in continuous operation at the De La Vina Street location since April 2006.
6. The proposed alternative condition that the Compassion Center cease operations until there are no more than two other dispensaries operating in the City, if imposed, would violate the Compassion Center's federal constitutional rights to due process of law and just compensation.

Because it is supported neither by the facts nor by the law, the staff hearing officer's decision cannot be sustained. For the same reasons, the Planning Commission's decision cannot be sustained. The City Council should grant the permit. Doing so is the only result consistent with due process, and with the public interest.

II. ABOUT THE COMPASSION CENTER OF SANTA BARBARA COUNTY.

The Compassion Center of Santa Barbara County, located at 2915 De La Vina Street, is a medical marijuana collective legally entitled to operate under California law. See Cal. Health & Saf. Code section 11362.775. The Compassion Center began operations in February 2000, and is the oldest medical marijuana collective in Santa Barbara. It has served the members of our community continuously since its inception. Declaration of Patrick Fourmy (Jan. 6, 2011).

The Compassion Center serves a mature patient base with needed medications. Many patients who belong to the Compassion Center collective are seriously ill members of the community, with conditions including AIDS, cancer,

and a variety of other painful and chronic diseases, including Alzheimer's disease, anorexia, Crohn's disease, glaucoma, post-traumatic stress disorder arising from war-time military service in Vietnam and Iraq, epilepsy, and multiple sclerosis. Fourmy Declaration (Jan. 6, 2011).

More than 1,000 members of the Compassion Center collective are patients over the age of 50. Supplemental Fourmy Declaration (Jan. 31, 2011).

To address the needs of the many seriously ill individuals who rely on it, the Compassion Center is the only collective in California to have, as collective members on staff, licensed registered nurses, who are available to advise patients on the proper medicinal use of marijuana to alleviate their symptoms. Fourmy Declaration (Jan. 6, 2011).

The Compassion Center has earned the strong support of the Santa Barbara medical community, as submissions in the file reflect. Dr. David Bearman, M.D., attests in a letter of support, that the Compassion Center "has proven to be an excellent resource for mature patients," notes that "the nurses who work there provide advice and support to clients regarding choices and options for medical cannabis," affirms that "the environment [at Compassion Center] is as professional as any physician's office," and observes that closing the Compassion Center would have the effect of encouraging illegal drug activity. See also, to the same effect, the Declaration of Dr. David Bearman (Jan. 31, 2011).

Dr. William Edelstein, M.D., praises the Compassion Center in his letter as "the most professional & efficient provider of medical marijuana" in the Santa Barbara area, noting they always properly call to verify prescriptions, and states that "this excellent service may be due to their employment of R.N.s, which I believe differentiates them from other marijuana providers." See also, to the same effect, the Declaration of Dr. William Edelstein (Jan. 27, 2011).

Dr. Stephen W. Hosea, M.D., the Director of Clinical Care at nearby Cottage Hospital, and a specialist in AIDS and infectious diseases, states in his letter that the Compassion Center:

"has proven to be *an indispensable resource* for the Santa Barbara community. One of the unique characteristics of the Compassion Center is that it is staffed with Registered Nurses. The atmosphere is comfortable,

professional and educational. ...The expertise of the staff is important in maximizing the therapeutic benefits of medical cannabis. *The Center is a model organization for a dispensary.*" (Emphasis added.)

Because of the critical services provided by the Compassion Center, Dr. Hosea and Dr. Bearman took time from their busy medical practices to appear at the initial hearing on Compassion Center's application for a permit on December 15, 2010. Dr. Hosea's statements are found at pages 44-45 of the transcript of the December 15 hearing that was submitted with the letter of appeal to the Planning Commission; Dr. Bearman's comments are at pages 33-36 of that transcript. Additionally, Dr. Hosea and Dr. Bearman both again took time from their practices to appear at the Planning Commission hearing on February 3, 2011 and to speak on behalf of the Compassion Center.

The Compassion Center has on staff a total of nine members of the collective, who are, of course, also members of the Santa Barbara community. Fourmy Declaration (Jan. 6, 2011).

During its 11 years of service to the community, the Compassion Center has worked closely with the Attorney General's Office, the Santa Barbara Police Department, and the Santa Barbara County Sheriff's Department to ensure that its activities have conformed fully to the letter and spirit of California law, and to the standards of the Santa Barbara community. Fourmy Declaration (Jan. 6, 2011).

It is significant that the Compassion Center has received nothing but support from its neighbors, a number of whom have submitted letters in support of the application. Smart Marketing, which shares a parking lot with the Compassion Center, states it has had "no troubles" and that the Compassion Center members are "respectful." Happy Little Hippo, a children's clothing shop, states that the Compassion Center's people "have always been polite and courteous." Dr. John Craviotto, the 101 Dental Laboratory and Madame Tailor Custom Alterations confirm in their letters that the Compassion Center has not caused any problems, and its members are, in the words of Madame Tailor, "nice and respectful." The Compassion Center's staff are, in the words of Plaza Liquors, "good neighbors." Iyengar Yoga Studio of Santa Barbara, a neighbor for the last three years situated less than a block away, commends the Compassion Center as

“a great neighbor; a civilized establishment that ...is a part of our neighborhood.”

III. THE STAFF HEARING OFFICER'S DECISION.

At the conclusion of a hearing held on December 15, 2010, the staff hearing officer denied the Compassion Center's application for a permit. The staff hearing officer denied the Compassion Center's application

“without prejudice making the findings contained in Section X of the written Staff Report dated December 7, 2010, and in consideration of Issue 12.”

Staff Hearing Officer Resolution No. 062-10, at p. 2 (December 17, 2010).¹

¹ On January 27, 2011, the Planning Division issued a staff report that recommended denial of the appeal by Patrick Fourmy on behalf of the Compassion Center. This staff report erroneously indicates the basis for the decision appealed from. At page 3, in its discussion of the staff hearing officer's decision, the January 27, 2011 staff report states:

“At [the] hearing, planning staff and the Police Department staff expressed concerns regarding the applicant's past negligence with regard to security, and therefore determined that the Storefront Collective Dispensary could have a potentially adverse affect relative to the safety of persons living in the surrounding area due to crime and nuisance activities (refer to Criterion 9).”

This is misleading. As reflected in the original staff report of December 15, 2010, there was only a single incident in the Compassion Center's 11-year history, a burglary of an off-site storage unit that the applicant reported to the police. As also further shown in the original staff report, the recommendation is that the Operations Plan be amended to provide that Management Members of the Compassion Center be required to take all reasonable steps to discourage and correct objectionable conditions relating to this incident. Applicant has no objection to this condition, and has already addressed the issue of secure storage, agreeing to store all cannabis turned over to the dispensary at its location. Indeed, the December 15, 2010 staff report itself concluded, at page 6:

The staff report itself addresses the twelve criteria that SBMC section 28.80.070 specifies the hearing officer “shall consider.” The twelfth and final criterion is

“12. That the Applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices with respect to the *operation of another business within the City.*” (Emphasis added)

The staff report states, regarding this factor:

“The applicant has passed the requisite background check. Per the applicant’s signed statement, the applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices with respect to the operation of another business within the City. As stated in Section VI of this Staff Report, the legal status of this dispensary is under dispute. If the dispensary discontinued operations for a period of more than 30 days since the adoption of the Medical Cannabis Dispensary Ordinance, it re-opened illegally and this criterion is not met. If the dispensary is currently legal non-conforming, this criterion is met.”

Staff Report, at pp. 7-8 (Dec. 15, 2010). Section VI of the December 15, 2010 staff report, referenced in the preceding paragraph, states:

“The legal status of the existing dispensary at 2915 De la Vina is currently under dispute. The City Attorney’s office *contends* that the dispensary discontinued operation for a period of time exceeding 30 days at some point between November 2007 and January 2009, thus losing its status as a legal non-conforming dispensary (see Exhibit C [letter from City Attorney’s

“The submitted security plan, operations plan, site plan, floor plan, hours of operation and were reviewed by the Police Department and determined to have incorporated features necessary in reducing crime related problems.”

Accordingly, this single instance in which applicant was a victim of a crime – which has been resolved with the conviction of the perpetrator, achieved with applicant’s assistance – cannot rationally be the basis for a permit denial, and was not, in fact, the basis for the staff hearing officer’s denial of the permit.

office)). The Attorney's office [sic] indicated what types of evidence could serve as proof that the dispensary operated continuously during that time. Adequate evidence showing continuous operation to the satisfaction of the City Attorney's office was not submitted and a Complaint for Injunctive Relief and Civil Penalties was filed against the applicant in the Santa Barbara Superior Court on June 30, 2010. The complaint *alleges* that the dispensary discontinued operations for a period of more than 30 days, and as such, is presently operating in violation of Municipal Code Chapter 28.80. Trial has been set for June 9, 2011." (Emphasis added.)

As noted above, there is as yet no written decision of the Planning Commission.

IV. THE COMPASSION CENTER'S PERMIT APPLICATION SHOULD BE GRANTED.

- 1. The staff hearing officer erroneously denied the permit despite the complete absence of any evidence that the Compassion Center actually had discontinued operations for more than 30 days.**

Both the Due Process Clause of the United States Constitution and California Code of Civil Procedure section 1094.5, authorizing judicial review of local agency decisions, require that a decision to deny a permit must be supported by substantial evidence. A decision not supported by substantial evidence is unconstitutional and statutorily invalid. Substantial evidence is defined as evidence of "ponderable legal significance ... reasonable in nature, credible, and of solid value." *H.N. & Frances C. Berger Foundation v. City of Escondido*, 127 Cal.App.4th 1, 7 (2005); *Valenzuela v. State Personnel Bd.*, 153 Cal.App.4th 1179, 1185 (2007).

The hearing officer's decision to deny the permit in this case was not supported by substantial evidence.

As shown above, the hearing officer's decision was based on "consideration of Issue 12" in the staff report. Staff Hearing Officer Resolution No. 062-10, at p. 2. The discussion of Issue 12 in the staff report in turn refers to Section VI of the staff report. Section VI, quoted above, states that the City Attorney's office "*contends* that" the Compassion Center discontinued operations for a period of

more than 30 days, that the City Attorney's office has filed a civil lawsuit against the Compassion Center based on this allegation, and that trial is scheduled for June 2011.

The staff report itself did not substantiate in any way the contention that the Compassion Center had discontinued operations for more than 30 days.

Section VI of the staff report did refer to Exhibit C, a letter from the City Attorney's office to the Compassion Center's managing member, Patrick Fourmy, dated April 7, 2010. The letter states:

"Inspections performed at the Real Property on November 21, 2007 and January 9, 2008, revealed that Compassion Center had ceased operation at that location [on De La Vina St.]. The city is also informed that after closing its location at 2915 De La Vina Street, Compassion Center reopened and began doing business at 3532 State Street in March 2008. Based on this information the City has determined that Compassion Center ceased operations at the Real Property for a period over thirty (30) days."

City Attorney's letter, April 7, 2010, p. 1.

This letter was the only submission before the staff hearing officer that related to the assertion that the Compassion Center had discontinued operations.

Under federal and California law, this lawyers' letter simply does not rise to the level of "evidence," let alone substantial evidence. The City Attorney has *alleged* that the Compassion Center discontinued operations for more than 30 days, making this claim in the letter, and in a civil lawsuit that is currently pending -- unresolved -- before the Santa Barbara Superior Court. But under California law, an attorney's signature "cannot transform" allegations into evidence, and "allegations [are] not 'evidence.'" *Zavala v. Board of Trustees*, 16 Cal.App.4th 1755, 1761 (1993).

Even if the City Attorney's signature on a letter could somehow transform allegations into evidence, the evidence would, in any event, be legally insufficient to support the adverse decision by the hearing officer. The allegation that two inspections were performed and the City "was informed" that the Compassion

Center "reopened" at a later date are, at best, vague and unsubstantiated hearsay.² And that is not enough:

"Even if admissible, hearsay evidence alone 'is insufficient to satisfy the requirement of due process of law, and mere uncorroborated hearsay does not constitute substantial evidence. [Citation.]' (*Dyer v. Watson* (1953) 121 Cal. App. 2d 84, 92; *Martin v. State Personnel Bd.* (1972) 26 Cal. App. 3d 573, 583 citing *Consolidated Edison Co. v. National Labor Relations Bd.* (1938) 305 U.S. 197, 229-230 [59 S. Ct. 206, 216-217, 83 L. Ed. 126]; *Kinney v. Sac. etc. Retirement System* (1947) 77 Cal. App. 2d 779, 782.)"

Gregory v. State Bd. of Control, 73 Cal.App.4th 584, 597 (1999); accord, *Walker v. City of San Gabriel*, 20 Cal.2d 879, 881.

Accordingly, since the hearing officer's factual determination that the Compassion Center had discontinued operations at some time for a period of more than 30 days is not supported by any evidence, let alone substantial evidence, the decision is legally unsupportable. It is a violation of due process, arbitrary and capricious, and clearly erroneous to deny a permit to continue an 11-year established operation in the complete absence of any evidence that the facts alleged in a lawyer's letter are anything more than allegations.³

2. Because the alleged violation of the prior ordinance assertedly took place *before* the effective date of the prior ordinance, that ordinance cannot be applied to deny a permit to the Compassion Center.

The hearing officer denied the permit based on the staff report's representation that the City Attorney's office had contended that the Compassion Center discontinued operations for a period of more than 30 days, and therefore was operating in violation of Municipal Code Chapter 28.80. The factual

² Under California Evidence Code section 1200, "'[h]earsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated."

³ Moreover, it must be stressed that this is an *unproven* allegation. The City Attorney filed suit against the Compassion Center based on this allegation and the case is set for trial on June 9, 2011. The permit process should not serve as an "end-run" around the judicial system for local officials.

contention consists of the assertion, in the City Attorney's letter of April 7, 2010, that

“[i]nspections performed at the Real Property on November 21, 2007 and January 9, 2008, revealed that Compassion Center had ceased operation at that location. The city is also informed that after closing its location at 2915 De La Vina Street, Compassion Center reopened and began doing business at 3532 State Street in March 2008.”

Thus, the essence of the City Attorney's factual contention is that the Compassion Center discontinued operations at some point for 30 days or more between November 20, 2007 – the day before the first inspection -- and some unspecified date in March 2008. Based on this unproven factual contention, the City Attorney contends that the Compassion Center is no longer a pre-existing legal use that was authorized under former Chapter 28.80, Ordinance No 5449, Section Three. City Attorney's Letter, April 7, 2010, pp. 1-2.⁴

The City Attorney has misread the City's ordinances, and in particular Ordinance No 5449, Section Three. Even if the Compassion Center *had* discontinued operations for more than 30 days between November 2007 and March 2008 – and it did not – *that would not, under the plain language of the City's ordinances, disqualify it as a pre-existing use* or show that its operations were in violation of municipal law.

Ordinance No. 5449 was enacted on March 26, 2008, and added a new chapter to the Santa Barbara Municipal Code, Chapter 28.80. Under Section 514 of the City Charter, the new Chapter 28.80 did not become effective until 30 days

⁴ In the letter of April 10, 2007, the City Attorney demanded proof of continuous operations be provided for the period October 1, 2007 to January 1, 2009. But the City Attorney's factual contention in its letter is limited to an alleged discontinuance of operations between November 20, 2007 and March 2008. The City Attorney offers not a shred of justification for this far broader demand, which exceeds the four-month scope of the factual contention of discontinued operation by almost a year.

later, on April 25, 2008.⁵ Section Three of this Chapter, relied on by the City Attorney in its letter, states in pertinent part:

“SECTION THREE. Those Dispensaries which were authorized pursuant to the Santa Barbara Municipal Code Chapter 28.80 prior to the date of the adoption of the ordinance enacting this Chapter^[6] shall be deemed pre-existing legal uses of real property upon which they are situated for a period of three (3) years from the date of the adoption of this Ordinance, provided the following operational conditions are complied with:

“1. the dispensary shall not be relocated nor shall it be discontinued for a period of time in excess of thirty (30) days without obtaining a dispensary permit pursuant to this Chapter;” (Emphasis added.)

The italicized language of Section Three plainly shows its application is *prospective only*. Section Three does not state that to be a preexisting use, the dispensary “shall not *have been* relocated” or “shall not *have been* discontinued” for more than 30 days – it says a dispensary “*shall not be* relocated nor *shall it be* discontinued.” This is future-oriented language that, indisputably, indicates prospective application only.

As noted above, the City Attorney’s factual contention is that the Compassion Center discontinued operations for a period of more than 30 days at some time between November 20, 2007 and some unspecified date in March 2008. But since the application of Section Three of Ordinance 5449 is plainly prospective only, and since the Ordinance did not become effective until April 25, 2008, the allegation, *even if true*, would not show a violation of the former ordinance.

⁵ Section 514 of the Charter provides that, subject to certain exceptions not applicable here, “Every ordinance shall become effective thirty (30) days from and after the date of its adoption”

⁶ Since Section Two of Ordinance No. 5449 expressly created a *new* Chapter 28.80 of the Santa Barbara Municipal Code, this reference makes no sense. No dispensaries were authorized by Chapter 28.80 the Santa Barbara Municipal Code prior to its enactment, nor could they have been. Any attempt to apply this nonsensical provision to the Compassion Center would violate due process.

Ordinance 5449, on its face, has no application to conduct that occurred before its effective date.

The denial of a permit to the Compassion Center because it allegedly discontinued operations for 30 days at some point prior to March 2008, and therefore assertedly violated an ordinance that is, on its face, prospective only, and that did not come into effect until April 2008, is arbitrary, irrational, and a violation of due process, in addition to violating local law.

3. Criterion 12 was plainly misapplied by the staff hearing officer.

As we have seen, the staff hearing officer denied a permit to the Compassion Center based on “consideration of Issue 12.” Staff Hearing Officer Resolution No. 062-10, at p. 2 (December 17, 2010). Issue 12 applies Criterion 12 of Section 28.80.070, which provides that the hearing officer shall consider, in pertinent part:

“12. That the Applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices with respect to *the operation of another business* within the City. (Ord. 5526, 2010.)”

(Emphasis added.) Here, the allegation was that the Compassion Center *itself* had discontinued operations for a period of more than 30 days, and thus was not operating lawfully under the prior ordinance. The hearing officer denied the permit on this basis.

Plainly, the hearing officer misread the ordinance. Even assuming that a non-profit medical marijuana dispensary can be properly regarded as a “business,” Criterion 12, on its face, applies solely to the operation of *another business* -- not the dispensary business itself.

For this reason alone, the decision cannot be sustained.

4. The staff hearing officer misunderstood and misapplied Section 28.80.070.

Section 28.80.070 of the ordinance provides that the hearing officer, in deciding whether to grant or deny a permit, shall “consider” each of twelve criteria. Criteria, of course, are standards of judgment to be used in evaluating or testing.

The ordinance does not provide that the hearing officer must find that each criteria is met or the permit shall be denied – instead, it mandates that the hearing officer “consider” each of the criteria.

Here, the staff hearing officer’s rigid approach erroneously led her to use the criteria, not as standards to be “considered” as part of a reasoned evaluation, as plainly intended, but instead as a simple, inflexible checklist.

The staff hearing officer expressly adopted the findings contained in Section X of the December 15, 2010 staff report as to the twelve criteria of Section 28.80.070. Staff Hearing Officer Resolution No. 062-10, at p. 2. Those findings deserve attention. They include findings that:

- the operation of the Compassion Center is consistent with California law and the Municipal Code.
- the location is not identified as an area of increased or high crime.
- there have not been a significant number of police calls or arrests in the dispensary’s former location.
- issuance of a dispensary permit to the Compassion Center is appropriate to meet the needs of the community for access to medical marijuana.
- issuance of the permit would serve the needs of City residents near the location.

Staff Report, at pp. 4-6 (Dec. 15, 2010).⁷

However, the staff hearing officer gave *no* effective weight to those factors that she was also required to consider – she gave effective weight to only one, Criterion 12.

⁷ As to Criteria 1, 2, 3, 4, 5 and 8, the findings conclude that these criteria have been fully satisfied. As to Criteria 7 and 9, the staff report has proposed conditions that are, in the event the permit is promptly granted in this proceeding, acceptable to the Compassion Center.

Thus, the staff hearing officer's approach led to the anomaly that a dispensary that is – unquestionably -- operating in the public interest, that has never been a nuisance in 11 years of operation, that has the strong endorsement of physicians, that meets an important need of ill members of the community, many of them older, that operates in a medically-appropriate manner, and that has the support of neighbors and the community – is denied a permit, because of a hyper-technical reason relating to a supposed discontinuance of operations.

Zoning laws should be administered with an awareness of context and common-sense. This is especially true of zoning laws that affect vulnerable segments of the population, such as the chronically ill.

Denying a permit in this case, in the unlikely event a permit denial would be ultimately upheld in court, would have the perverse result of driving out of operation a collective which has, beyond question, been dedicated to lawful operation, high standards, and community well-being.

This serves no one's interest.

- 5. The Compassion Center did not discontinue operations for 30 days or more between November 2007 and March 2008, as erroneously alleged, and has remained in continuous operation at the De La Vina Street location since April 2006.**

As discussed above, the staff hearing officer's denial of a permit to the Compassion Center was ultimately based upon the City Attorney's factual contention, in its letter of April 7, 2010, that the Compassion Center discontinued operations at some point for 30 days or more between November 20, 2007 and some unspecified date in March 2008. This assertion is based on alleged inspections performed on November 21, 2007 and January 9, 2008 that allegedly "revealed that Compassion Center had ceased operation at that location" on De La Vina Street. City Attorney's Letter, April 7, 2010, pp. 1-2.

This factual contention is incorrect. As explained in the sworn Declaration of Patrick Fourmy (Jan 6, 2011):

"5. The Compassion Center has operated our dispensary at 2915 De La Vina Street continuously, without a break in operations, from April 2006 through the present date. It is currently our only location.

"6. In the Fall of 2007, the Drug Enforcement Agency attempted to exert pressure on our 2915 De La Vina Street landlord, Dr. Bernard Friedman. Exhibit A to this declaration is a true and correct copy of a letter from the DEA to Dr. Friedman dated September 19, 2007. In response, the Compassion Center decided to adopt a somewhat lower profile at this location. At the same time, together with my brother Christian Fourmy, also a member of the Compassion Center collective, we decided to open Harmonic Alliance, a music store. Harmonic Alliance opened its doors at 2915 De La Vina Street in November 1, 2007. It occupied the front of the 2915 De La Vina Street building. When Harmonic Alliance opened for business, we placed signage on the building making it identifiable from the street as housing Harmonic Alliance *only*.

"7. Harmonic Alliance continued to operate at the front of the building at 2915 De La Vina Street from November 1, 2007 until April 2009, when my brother and I closed the business.

"8. Since, during the period of November 1, 2007 until April 2009, the front of the building was occupied by Harmonic Alliance, and the building's signage identified only Harmonic Alliance, it is possible to understand how a visitor might mistakenly have concluded that the Compassion Center no longer operated at the location.

"9. But the Compassion Center did continue to operate at the 2915 De La Vina Street location during, before and after the entire period of occupancy of Harmonic Alliance. During the period of Harmonic Alliance's operations in the front of the building, the Compassion Center continued its operations *in the rear of the building*. Patients and collective members entered and exited through the door at the rear of the building.

"10. In its letter of April 7, 2010, the City Attorney's office demanded proof of continuous operation from the period October 1, 2007 to January 1, 2009. Since the City Attorney has only made the claim that the Compassion Center discontinued operations at some time between November 2007 and

March 2008, it is difficult to understand the justification for this broad demand. Nevertheless, the Compassion Center submits as Exhibit B to this declaration a true and correct copy of signed statements -- by a total of 103 patients -- affirming that

‘during the period of January 1 2007 to October 2009, I received my medicine from 2915 De La Vina St.’

“11. The Compassion Center has maintained current business licenses for its location at 2915 De La Vina Street at all applicable times. Exhibit C is a certified statement from the Finance Department-Treasury Division of the City of Santa Barbara, dated July 9, 2009, stating that the Compassion Center

‘has held a City of Santa Barbara Business License Tax Certificate since April 7, 2006, and is licensed through March 31, 2010. The Compassion Center . . . has always been located and is currently conducting business at 2915 De La Vina St., Santa Barbara, CA 93105.’”

Mr. Fourmy’s January 6th, 2010 declaration is further corroborated by the Declaration of Sol Levitt, Esq., also submitted to the Planning Commission. Mr. Levitt, who is the attorney for the landlord of the Compassion Center at 2915 De La Vina Street, corroborates the Compassion Center’s long term, uninterrupted tenancy of the building, and further affirms that the Compassion Center remained in operation at the location during the very period the City Attorney erroneously claims it discontinued operations.

Additionally, applicant submits with this letter of appeal several additional documents that offer even more corroboration that the Compassion Center did not discontinue operations at 2915 De La Vina St. These include:

- A letter from Total Pharmacy Supply, one of the Compassion Center’s medical container suppliers based in Arlington, Texas, indicating the Compassion Center’s continued purchases of pharmaceutical supplies beginning in March of 2006 to the present.

- A letter from Pacific Paper Products as well as invoices confirming product deliveries to the Compassion Center located at 2915 De La Vina Street, Santa Barbara, CA 93105 during the time in question.
- A letter from Wescom Credit Union showing continuous banking operations for the time in question and specifically banking records for the date of November 21st, 2007, an alleged date of a site visit as noted in the City Attorney's letter to Patrick Fourmy dated April 7, 2010.
- A letter from Wescom Credit Union showing continuous banking operations for the time in question and specifically banking records for the date of January 9th, 2008, another alleged date of a site visit as noted in the City Attorney's letter to Patrick Fourmy dated April 7, 2010.

True and correct copies of these materials are included as exhibits to the Second Supplemental Declaration of Patrick Fourmy, submitted with this letter of appeal.

It must be noted that the applicant is under no legal obligation to provide the City Attorney or the Planning Commission staff with any documents whatsoever. No subpoena has ever been issued to applicant or the Compassion Center, nor is there any court order or other process that might place the applicant under any legal obligation to provide documentation proving that it continued in operation during the period in question.

Nevertheless, the applicant has voluntarily come forward with considerable documentation, summarized above, demonstrating that, in fact, the Compassion Center continued operations during the four-month period in question.

This documentation unquestionably amounts to substantial, legally sufficient evidence proving the point in dispute. We respectfully suggest that no reasonable person -- considering this evidence in a fair and unbiased manner -- could come to any conclusion other than that the Compassion Center remained in operation at all relevant times.

6. The proposed alternative condition that the Compassion Center cease operations until there are no more than two other dispensaries operating in the City, if imposed, would violate the Compassion Center's federal constitutional rights to due process of law and just compensation.

As noted above, the staff hearing officer denied the Compassion Center's permit application based on Criterion 12, in accordance with the staff report's recommendation. The staff report alternatively recommended that if the Compassion Center's permit was granted, the permit be subject to certain conditions. One of those conditions would require that the Compassion Center cease its operations.

As explained in Section VIII.A of the staff report, the ordinance limits to total number of dispensaries in the City to three. Seven are currently operating, with all but one required to close, under the City Attorney's interpretation of the law, by January 26, 2011. One dispensary has since obtained a permit. Another obtained an injunction issued by the federal district court for the Central District of California on November 24, 2010, and an injunction is expected to be issued on behalf of yet another. Staff Report at pp. 3-4 (Dec. 15, 2010).

The proposed Staff Hearing Officer Conditions of Approval (Dec. 15, 2010) provided, as Condition A:

"The operation of this dispensary shall not commence and no building permit may be issued for the tenant improvement associated with this use until such time that, including the subject dispensary, no more than the maximum number of Storefront Collective Dispensaries allowed by the Medical Marijuana Storefront Collective Dispensary Ordinance in the City are in operation."

This condition was apparently *erroneously included in the staff report*. Another applicant for a dispensary permit was also heard by the staff hearing officer on December 15, 2010, immediately before the hearing on the Compassion Center's application. (A partial transcript of the recorded proceedings on the Application of Heather Poet for the Santa Barbara Patients Group, 16 South La Cumbre Road, has been included with the filing of the appeal before the Planning Commission, and should be included with the materials before the Council.) At

that hearing, the applicant's attorney raised the issue whether the operation of dispensaries that had not received permits would count toward the total of three dispensaries allowed under the ordinance. The City's representative at the hearing clearly stated that they would not:

"MR. KATO: As far as your concern goes, we have been in contact with the City Attorney's Office, and their opinion is *the two dispensaries that are preplanned into the previous ordinance* that are supposed to -- that were supposed to close by January 29, *if they are allowed to remain*, they're -- the City Attorney's Office does not consider them to be permitted under the new ordinance, so they're -- *don't count towards the three*.

"So there's still two open spots, 331 North Milpas being -- taking one of the -- one of the spots, and then two open spots." (Emphasis added.)

Application of Heather Poet, etc., Partial Transcription of Recorded Proceedings (Dec. 15, 2010) at p. 7, lines 7-18.

Accordingly, the staff's inclusion of this condition in the staff report appears to be unintended and contrary to City policy.

If it *were* applied to the Compassion Center, however, this proposed condition would be unconstitutional. As the California Supreme Court has noted,

"if the law effects an unreasonable, oppressive, or unwarranted interference with an existing use, or a planned use for which a substantial investment in development costs has been made, the ordinance may be invalid as applied to that property unless compensation is paid. (*Beverly Oil Co. v. City of Los Angeles*, *supra*, 40 Cal. 2d 552, 559; *Village of Terrace Park v. Errett* (2d Cir. 1926) 12 F.2d 239.) Zoning ordinances and other land-use regulations customarily exempt existing uses to avoid questions as to the constitutionality of their application to those uses."

Hanson Bros. Enterprises, Inc. v. Board of Supervisors, 12 Cal.4th 533, 551-552 (1996). As stated in *Tahoe Regional Planning Agency v. King*, 233 Cal.App.3d 1365, 1394 (1991):

“A jurisdiction may eliminate nonconforming uses by either of two constitutionally equivalent alternatives: it can eliminate the use immediately by payment of just compensation, or it can require removal of the use without compensation following a reasonable amortization period.”

Here, the City has offered no compensation. The ordinance itself provides for a six-month amortization period, but this is clearly constitutionally insufficient. In any event, under the proposed condition, the Compassion Center would be required to *immediately* go out of business upon the issuance of a permit containing the condition, without *any* period of amortization. The period of non-operation would be indefinite, and could last for the imaginable future. Accordingly, under *Tahoe Regional Planning Agency* and similar authorities, proposed Condition A, as applied to the Compassion Center, would be clearly unconstitutional.

The same is true under the approach of federal cases. The United States Court of Appeals for the Ninth Circuit has ruled that an amortization of a nonconforming land use is constitutionally impermissible

“if it puts a business in an impossible position due to a shortage of relocation sites.”

World Wide Video of Wash., Inc. v. City of Spokane, 368 F.3d 1186, 1200 (9th Cir. 2004). Here, the ordinance *itself*, at Section 28.80.050, creates such a “shortage of relocation sites” by limiting the number of dispensaries in the City to a total of three. The application of Condition A would put the Compassion Center in what the federal court of appeals described as “an impossible position,” and thus establish a constitutional violation.

Accordingly, Condition A could not constitutionally be imposed on the Compassion Center.

Proposed alternative Conditions E and F are also unacceptable. Condition E requires that the tenant improvements in conformance with plans submitted on November 22, 2010 shall be completed and have received final building inspection “[p]rior to commencement of business operations.” Similarly, Condition F might be interpreted to require that an alarm system permit be issued and an alarm system be installed before operation is allowed. On the face of it, these requirements

would be rational if applied to a new business – but the Compassion Center is an ongoing, pre-existing use. The Compassion Center has no objection whatsoever to promptly obtaining the requested permits and completing installation of the improvements and alarm system on the issuance of a permit. However, if these conditions are interpreted to mean that the Compassion Center must cease its ongoing operations as a nonconforming use until they are satisfied, then the conditions would be arbitrary, irrational, and a violation of due process, as well as inimical to the public interest.

V. ADDITIONAL CONSTITUTIONAL DEFECTS OF THE SANTA BARBARA ORDINANCE, AND OBJECTIONS THERETO.

A review of Chapter 28.80 reveals other serious constitutional defects in this ordinance. These constitutional flaws include, but are not limited to, the following:

- Section 28.80.080, subdivision D.1 effectively prohibits medical marijuana dispensaries from operating on Sundays. The Santa Barbara Municipal Code singles out only one other class of business for mandatory closure on Sundays – pawnbrokers and junk dealers. See Municipal Code section 5.44.210. Other retail operations that are much more analogous and are, in equal protection terminology, similarly situated to marijuana dispensaries, are allowed to operate on Sundays without municipal interference – including, for example, pharmacies, liquor stores, restaurants, doctor's offices, and the like, without limitation. This entirely disparate treatment of retail operations that are similarly situated lacks any rational basis, and therefore violates the equal protection guarantees of the federal and California constitutions.

- Section 28.80.080, subdivision F.2 prohibits the sale by a dispensary of any means by which to administer medical marijuana, and subdivision F.1 gives a staff hearing officer uncontrolled discretion to allow or prohibit the sale of other items by dispensaries. By comparison, pharmacies, the businesses most similarly situated, for equal protection purposes, suffer no such municipal restriction – pharmacies can sell a wide variety of items ancillary to the primary purpose of dispensing medications, such as colostomy bags, canes, pill bottles, etc. The ordinance bans the sale of items by dispensaries which will be beneficial to patients in just the same way that items sold by pharmacies are beneficial – for example, the sale of vaporizers, which are helpful to patients who cannot tolerate

smoke. This distinction between dispensaries and pharmacies is arbitrary, and because it lacks any rational basis, violates the constitutional guarantees of equal protection. Moreover, the grant of entirely unlimited discretion to staff hearing officers to decide which other items a given dispensary will be permitted to sell, because of the absence of standards to guide the decision-maker's discretion, violates the constitutional guarantees of due process of law.

- Section 28.80.090 authorizes the police department and community development department to obtain dispensary documents without a warrant, subpoena or other court process. With the exception of private medical records, City employees can, at will, inspect a collective's records. Those records include the names and personal identifying information of all members of the collective, including dates of birth, addresses and telephone numbers. There is no limitation in place with respect to what City employees may do with this information. This section is virtually identical in purpose and effect to Los Angeles Municipal Code section 45.19.6.4. On December 10, 2010, the Los Angeles Superior Court ruled that this provision of the City of Los Angeles medical marijuana ordinance violated the privacy rights guaranteed by Article I Section 1 of the California Constitution, and issued an injunction against its enforcement. *Medical Marijuana Collective Litigation*, L.A.S.C. Case No. BC433942 (Dec. 10, 2010).

Applicant objects to these unconstitutional provisions, and requests that the permit that should be issued specifically exempt the applicant and the Compassion Center from any obligation of compliance with these unconstitutional provisions.⁸

VI. RESERVATION OF RIGHTS.

In the event of an adverse outcome on its application for a permit, applicant and the Compassion Center reserve all of their legal rights in this matter, including the right to bring a civil action in the appropriate forum for injunctive and

⁸ Generally, a facial challenge to a zoning ordinance must be brought within ninety days of the ordinance's effective date. But there is an important exception to this rule. Under California Supreme Court precedent, facial constitutional challenges to Chapter 28.80 would not be time-barred if they are brought in connection with a challenge to the denial of a permit application by the Compassion Center, or the imposition of unlawful conditions on such a permit. *Travis v. County of Santa Cruz*, 33 Cal.4th 757, 767 (2004).

declaratory relief, a writ of administrative mandamus and/or mandate, damages, attorney fees pursuant to Code of Civil Procedure section 1021.5 and 42 U.S.C. section 1988, and such other and further relief as a court of competent jurisdiction may deem appropriate.

VII. CONCLUSION.

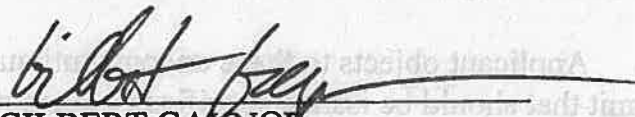
For the foregoing reasons, as well as those adduced at or before the hearing on the matter, the City Council should grant the appeal of the Compassion Center of Santa Barbara County, and order the issuance of a permit allowing its continued operation.

DATED: February 14, 2011

Yours very truly,

Gilbert Gaynor

Attorney for Applicant Patrick Fourmy for
the Compassion Center of Santa Barbara
County


GILBERT GAYNOR
Cal. Bar No. 107109

Enclosures:

Second Supplemental Declaration of Patrick Fourmy
and Exhibits thereto

SECOND SUPPLEMENTAL DECLARATION OF PATRICK FOURMY

RECEIVED

I, Patrick Fourmy, declare as follows:

2011 FEB 14 PM 3:50

CITY OF SANTA BARBARA

I am a resident of Santa Barbara, California, and over the age of eighteen. If called upon to do so, I could and would testify competently and upon my personal knowledge as follows:

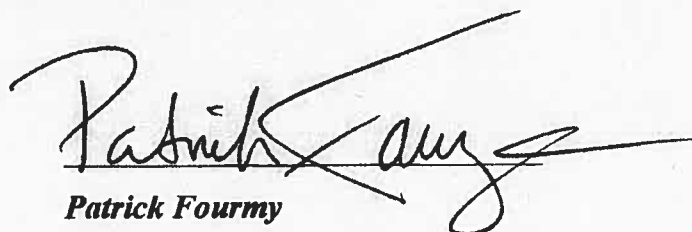
1. Attached as Exhibit 1 is a letter from Total Pharmacy Supply, one of our medical container suppliers based in Arlington, Texas, indicating our continued purchases of pharmaceutical supplies beginning in March of 2006 to the present.

2. Attached as Exhibit 2 is a letter from Pacific Paper Products as well as invoices for product deliveries to the Compassion Center located at 2915 De La Vina Street, Santa Barbara, CA 93105 during the time in question.

3. Attached as Exhibit 3 is a letter from Wescom Credit Union showing continuous banking operations for the time in question and specifically banking records for the date of November 21st, 2007, an alleged date of a site visit as noted in the City Attorney's letter to Patrick Fourmy dated April 7, 2010.

4. Attached as Exhibit 4 is a letter from Wescom Credit Union showing continuous banking operations for the time in question and specifically banking records for the date of January 9th, 2008, another alleged date of a site visit as noted in the City Attorney's letter to Patrick Fourmy dated April 7, 2010.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th day of February 2011 at Santa Barbara, California.


Patrick Fourmy

SECOND SUPPLEMENTAL DECLARATION OF PATRICK FOUNNY

RECEIVED
FEB 12 PM 3:20

I, Patrick Founny, declare as follows:

I am a resident of Santa Barbara, California, and over the age of 18 years. I call upon to do so, I could and would testify competently and upon my personal knowledge as follows:

1. Attached as Exhibit 1 is a letter from Total Pharmacy Supply, one of our medical container suppliers based in Arlington, Texas, indicating our continued purchases of pharmaceutical supplies beginning in March of 2005 to the present.

2. Attached as Exhibit 2 is a letter from Pacific Paper Products as well as invoices for product deliveries to the Compassion Center located at 2915 De La Vina Street, Santa Barbara, CA 93102 during the time in question.

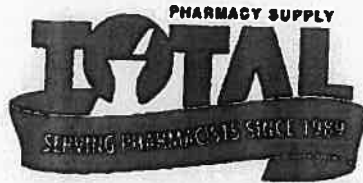
3. Attached as Exhibit 3 is a letter from Western Union showing continuous banking operations for the time in question and specifically banking records for the date of November 21st, 2005, an alleged date of a site visit as noted in the City Attorney's letter to Patrick Founny dated April 7, 2010.

4. Attached as Exhibit 4 is a letter from Western Union showing continuous banking operations for the time in question and specifically banking records for the date of January 28th, 2006, another alleged date of a site visit as noted in the City Attorney's letter to Patrick Founny dated April 7, 2010.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th

day of February 2011 at Santa Barbara, California.


Patrick Founny



February 9, 2011

To Whom It May Concern:

This letter is in reference to the Compassion Center located at 2915 De La Vina St. Santa Barbara, CA 93105, the Compassion Center has purchased pharmacy supplies from us beginning in March 2006. They have placed orders with us every couple of months, up until the present and continue to be a loyal customer of Total Pharmacy Supply.

Sincerely,

Miriam Webster

Miriam Webster
Accounting Supervisor
Total Pharmacy Supply
800-878-2822 ext. 127
miriam@tps-online.com



February 9, 2011

To Whom It May Concern:

This letter is in reference to the Compassion Center located at 7915 De La Vina St. Santa Barbara, CA 93103. The Compassion Center has purchased pharmacy supplies from us beginning in March 2006. They have placed orders with us every couple of months up until the present and continue to be a loyal customer of Total Pharmacy Supply.

Sincerely,

William Webster
Accounting Supervisor
Total Pharmacy Supply
800-878-5823 ext. 127
william@totalpharmacy.com

EXHIBIT 2

PACIFIC PAPER PRODUCTS

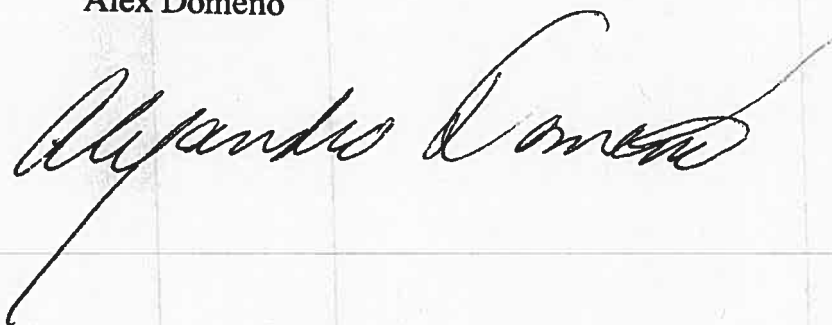
Manufacturers/Distributors of Packaging Supplies

To whom it may concern,

January 17th, 2011

The Compassion Center of Santa Barbara County has been a customer of Pacific Paper Products since 2004. We have been making deliveries without interruption to the Center's 2915 De La Vina Street location since 2006. They continue to be a great customer and always pay there bills on time.

Pacific Paper Products
Alex Domeno



WAREHOUSE: 132 Garden Street, Santa Barbara, CA 93101
Tel. (805) 957-1144 ☐ Toll (800) 750-1200 ☐ FAX (805) 957-1033

Pacific Paper, Inc
132 Garden Street #39
Santa Barbara, CA 93101

Phone: 805) 957-1144

Fax: 805) 957-1033

INVOICE

DATE	INVOICE #
12/3/07	68756

BILL TO
Compassion Center 2915 De La Vina Santa Barbara, CA 93105

SHIP TO
SAME

PO NUMBER	TERMS	DUE DATE	REP	SHIP DATE	SHIP VIA	DRIVER SIGNATURE
Verbal/ Patrick	Net 30	1/4/08	HA	12/3/07	Delivered	
PULLED BY__	QUANTITY	ITEM CODE	PRODUCT DESCRIPTION		PRICE EACH	AMOUNT
	6	ST4-2503	Poly Bag, Seal Top 2.5 x 3 4.0M (100 pk)		3.49	20.94T
	8	ST4-0604-RT	Poly Bag, Seal Top 6 x 4 4.0M (100/PK)		6.99	55.92T
	2	NEW	PVNP-0608 (250 ct)		13.95	27.90T
			Sales Tax		8.75%	9.17
TOTAL						\$113.93

E-mail:

accounting@pacificpaperproducts.com

Pacific Paper, Inc
132 Garden Street #39
Santa Barbara, CA 93101

Phone: 805) 957-1144

Fax: 805) 957-1033

INVOICE

DATE	INVOICE #
1/2/08	70342

BILL TO
Compassion Center 2915 De La Vina Santa Barbara, CA 93105

SHIP TO
SAME

PO NUMBER	TERMS	DUE DATE	REP	SHIP DATE	SHIP VIA	DRIVER SIGNATURE
Verbal/ Patrick	Net 30	2/3/08	HA	1/3/08	Delivered	
PULLED BY__	QUANTITY	ITEM CODE	PRODUCT DESCRIPTION		PRICE EACH	AMOUNT
	400	NEW	36 x 48 OD-BF48 Foil Bag (EA)		3.45	1,380.00T
	1	FRT CHG	Freight Charge		83.35	83.35
			Sales Tax		8.75%	120.75
Payment due 30 days after date of invoice. Thank You					TOTAL	\$1,584.10

E-mail: accounting@pacificpaperproducts.com

INVOICE

INVOICE #	DATE
10943	12-08

Pacific Paper, Inc.
 132 Garden Street #30
 Santa Barbara, CA 93101
 Phone: (805) 967-1111
 Fax: (805) 967-1011

SHIP TO
CA 93101

SHIP TO
Concession Center 2012 E 1st Ave Santa Barbara, CA 93102

PO NUMBER	TERMS	DUE DATE	ITEM	SHIP DATE	SHIP VIA	DRIVER SIGNATURE
10943	Net 30	12/08	HA	12/08	Delivered	
QUANTITY	ITEM CODE	PRODUCT DESCRIPTION	PRICE EACH	AMOUNT		
400 NEW	1 RT CHG	36 x 48 100% Recycled Paper (500)	2.75	1,100.00		
		Freight Charge	83.33	83.33		
		Sales Tax	8.12	120.72		
				TOTAL	1,304.05	

EXHIBIT 3



February 3, 2011

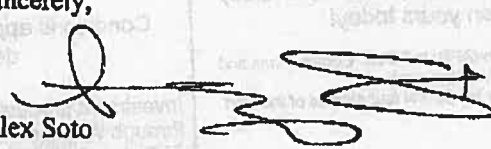
Re: The Compassion Center
Account#703367

To Whom It May Concern:

The Compassion Center located at 2915 De La Vina Street, Santa Barbara CA 93105 had an account with Wescom Credit Union from May 25, 2006 until September 12, 2009. This account never closed during that time period. The account activity is presently being order for the Compassion Center and will be available for pick up within two business days. We appreciate your patience during this time.

If you have any questions, please contact us at 1-888-4WESCOM (1-888-493-7266)

Sincerely,


Alex Soto
Wescom Credit Union
Branch Manager



Account Number 703367

Statement Period 11-01-07 thru 11-30-07

Page 1 of 4

THE COMPASSION CENTER OF SB CO
2915 DE LA VINA ST
SANTA BARBARA CA 93105

For questions contact us:
Signature Member Line: 1-866-2-WESCOM (1-866-293-7266)
Teller#Phone: 1-877-4-TELLER (1-877-483-5537)
Signature Member E-mail: signaturemember@wescom.org
Web Site: www.wescom.org

P.O. Box 7058
Pasadena, CA 91109-7058

Refer-a-Friend Sundays

When your friend opens a new Checking Account with a minimum deposit of \$250 on any Sunday in 2007, you'll both get \$25 and a fun picture game.

It's easy. Fill out the front side of a Refer-a-Friend coupon and hand it to a friend.

Visit us at www.wescom.org to print a Refer-a-Friend coupon or to email this offer directly to as many friends as you'd like.

Hurry! There are less than five Sundays to go. Offer ends December 31, 2007. Refer a Friend today and let Wescom bring a little more enjoyment to your friendly gatherings with a fun picture game.

Certain restrictions and conditions may apply. Visit www.wescom.org for details.

ACCOUNT SUMMARY

SAVINGS/ CHECKING	BALANCE
Savings (1)	██████████
Checking (1)	██████████
TOTAL BALANCES (2)	██████████
AVERAGE DAILY BALANCE	██████████
YTD DIVIDENDS EARNED	██████████
TAXABLE DIVIDENDS EARNED	██████████

HELOC Introductory Rates as low as 3.99%

Wescom has reduced the introductory rates on our Home Equity Lines of Credit (HELOC).

Now is the perfect time to open a new, low-rate HELOC with Wescom. Call 1-888-4WESCOM (1-888-493-7266) to open yours today!

Annual Percentage Rate (APR) is 7.50%. Certain terms and conditions apply. Introductory rates apply for the first four months of the loan.

WFS Asset Maximizer Account Offers Higher Rates!

Earn as high as a 3.80% APY on a WFS Asset Maximizer Account. To open an AMA call 1-888-4WESCOM today.

Conditions apply. Please ask for details.

Investment products and services offered through Wescom Financial Services, LLC (WFS), a Registered Investment Advisor, broker-dealer, and a wholly owned subsidiary of Wescom Credit Union. Registered Representatives are employed by Wescom Credit Union and registered through WFS (Member FINRA/SIPC).

Investments are not NCUA/NCUSIF Insured, not Credit Union Guaranteed, and may lose value.

REGULAR SAVINGS 00

Dividends Earned In 2007: \$1.37

Account Ownership: PATRICK FOURMY / Authorized Signer, SHARON PALMER / Authorized Signer

Beginning Balance + Deposits & Other Credits (1) - Withdrawals & Other Debits (0) = New Balance

\$0.12 \$0.00

Trans Date	Effective Date	Transaction Description	Amount	New Balance
11/30		Beginning Balance		
		Dividend Earned	0.12	
		Annual Percentage Yield Earned (APYE) For Period: 0.730%		

FREE CHECKING 01

Dividends Earned In 2007: \$0.00

Account Ownership: PATRICK FOURMY / Authorized Signer, SHARON PALMER / Authorized Signer

Beginning Balance + Deposits & Other Credits (7) - Checks Cleared (32) - Withdrawals & Other Debits (6) = New Balance

Trans Date	Effective Date	Transaction Description	Amount	New Balance
11/01		Beginning Balance		
11/01		Deposit ACH AMERICAN EXPRESS	675.54	
		TYPE: SETTLEMENT CO: AMERICAN EXPRESS		
11/01		Deposit ACH BANKCARD ACH1	4,262.09	
		TYPE: MTOT DEP CO: BANKCARD ACH1		
11/01		Check # 001382	-1,200.00	
11/02		Deposit ACH AMERICAN EXPRESS	251.75	
		TYPE: SETTLEMENT CO: AMERICAN EXPRESS		
11/02		Deposit ACH BANKCARD ACH1	5,244.58	
		TYPE: MTOT DEP CO: BANKCARD ACH1		
11/02		Withdrawal ACH DISCOVER NETWORK	-49.08	
		TYPE: SETTLEMENT CO: DISCOVER NETWORK		
11/05		Deposit ACH AMERICAN EXPRESS	183.71	
		TYPE: SETTLEMENT CO: AMERICAN EXPRESS		
11/05		Deposit ACH AMERICAN EXPRESS	200.23	
		TYPE: SETTLEMENT CO: AMERICAN EXPRESS		
11/05		Withdrawal ACH BANKCARD ACH1	-35.00	
		TYPE: MTOT DISC CO: BANKCARD ACH1		
11/05		Withdrawal ACH BANKCARD ACH1	-444.63	
		TYPE: MTOT DISC CO: BANKCARD ACH1		
11/06		Deposit ACH BANKCARD ACH1	304.57	
		TYPE: MTOT DEP CO: BANKCARD ACH1		
11/06		Withdrawal ACH AMERICAN EXPRESS	-4.50	
		TYPE: COLLECTION CO: AMERICAN EXPRESS		
11/06		Check # 001325	-11,469.22	
11/06		Check # 001118	-9,962.77	
11/06		Check # 001115	-7,000.00	
11/06		Check # 001114	-5,000.00	
11/07		Check # 001116	-5,000.00	
11/07		Check # 001117	-2,800.00	
11/07		Check # 001113	-1,220.00	
11/07		Check # 001384	-80.86	
11/13		Check # 001118	-320.00	

FREE CHECKING 01 (CONTINUED)

Trans Date	Effective Date	Transaction Description	Amount	New Balance
11/14	11/13	Check # 001383		
11/14	11/13	Check # 001385	-750.00	
11/14		Withdrawal ACH NEOS MERCHANT SO	-555.00	
		TYPE: FEES CO: NEOS MERCHANT SO	-50.45	
11/14		Withdrawal ACH NEOS MERCHANT SO		
		TYPE: FEES CO: NEOS MERCHANT SO	-50.45	
11/14		Check # 001390	-934.00	
11/14		Check # 001386	-497.00	
11/15		Check # 001119	-1,164.01	
11/16	11/15	Check # 001405	-2,750.00	
11/16		Check # 001393	-1,761.72	
11/16		Check # 001402	-89.54	
11/17	11/16	Check # 001408	-800.00	
11/17	11/16	Check # 001407	-465.00	
11/19		Check # 008710	-298.50	
		Processed Check - SO CAL EDISON		
		TYPE: MAILED PMT		
11/19		Check # 001388	-425.00	
11/20		Check # 001411	-87.33	
		Processed Check - VERIZON WEST ARC		
		TYPE: VERIZONCA		
11/21		Check # 001406	-480.00	
11/21		Check # 001404	-29.95	
11/24	11/23	Check # 001414	-910.00	
11/24	11/23	Check # 001413	-392.50	
11/26		Check # 001410	-667.00	
11/27		Check # 001409	-345.00	
11/27		Check # 001416	-140.00	
11/28		Check # 001412	-180.00	
11/30		Check # 001415	-580.00	

Summary of Cleared Checks

Check #	Date Cleared	Amount	Check #	Date Cleared	Amount	Check #	Date Cleared	Amount
001113	11/07	1,220.00	001114	11/06	5,000.00	001115	11/06	7,000.00
001116	11/07	5,000.00	001117	11/07	2,800.00	001118	11/06	9,962.77
001118*	11/13	320.00	001119	11/15	1,164.01	001325*	11/06	11,469.22
001382*	11/01	1,200.00	001383	11/14	750.00	001384	11/07	80.86
001385	11/14	555.00	001386	11/14	497.00	001388*	11/19	425.00
001390*	11/14	934.00	001393*	11/16	1,761.72	001402*	11/16	89.54
001404*	11/21	29.95	001405	11/16	2,750.00	001406	11/21	480.00
001407	11/17	465.00	001408	11/17	800.00	001409	11/27	345.00
001410	11/26	667.00	001411	11/20	67.33	001412	11/28	180.00
001413	11/24	392.50	001414	11/24	910.00	001415	11/30	580.00
001416	11/27	140.00	008710*	11/19	298.50			

* Asterisk next to number indicates skip in number sequence.



703367 - THE COMPASSION CENTER OF SB CO
STATEMENT PERIOD: 11-01-07 thru 11-30-07



February 2, 2011

Re: The Companies (Credit
Accounts) 100307

To: When I May Contact

EXHIBIT 4

Alan Stein
Westcom Credit Union
Branch Manager



February 3, 2011

Re: The Compassion Center
Account#703367

To Whom It May Concern:

The Compassion Center located at 2915 De La Vina Street, Santa Barbara CA 93105 had an account with Wescom Credit Union from May 25, 2006 until September 12, 2009. This account never closed during that time period. The account activity is presently being order for the Compassion Center and will be available for pick up within two business days. We appreciate your patience during this time.

If you have any questions, please contact us at 1-888-4WESCOM (1-888-493-7266)

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Soto", with a stylized flourish at the end.

Alex Soto
Wescom Credit Union
Branch Manager

Account Number 703367

Statement Period 01-01-08 thru 01-31-08

Page 1 of 3

THE COMPASSION CENTER OF SB CO
2915 DE LA VINA ST
SANTA BARBARA CA 93105

For questions contact us:
Signature Member Line: 1-866-2-WESCOM (1-866-293-7266)
Teller#Phone: 1-877-4-TELLER (1-877-483-5537)
Signature Member E-mail: signaturemember@wescom.org
Web Site: www.wescom.org

P.O. Box 7058
Pasadena, CA 91109-7058

The New Retirement Mentality Seminar

Join Wescom Financial Services for a special complimentary, no-obligation seminar. The New Retirement Mentality looks at planning your life before and after retirement with an emphasis on finding balance and contentment. Participants are introduced to ways that they can plan their lives and live their dreams regardless of age. Mitch Anthony, author of *The New Retirementality*, will discuss how to achieve the direction and financial security necessary to live the lives we really want.

WHEN: Saturday, March 8, 2008, 9:00 a.m.

WHERE: Wescom Operations Center, 5601 E. La Palma Ave., Anaheim, CA 92807

To register, visit www.wescom.org or call 1-888-4WESCOM (1-888-493-7266), ext. 8003.

ACCOUNT SUMMARY

SAVINGS/CHECKING	BALANCE
Savings (1)	
Checking (1)	
TOTAL BALANCES (2)	
AVERAGE DAILY BALANCE	
YTD DIVIDENDS EARNED	
TAXABLE DIVIDENDS EARNED	

Enterprise Used Auto Sales Event

Rates as low as
6.49% APR*

Get a great deal on a used car! Special rate available on Enterprise purchases made February 2-16, 2008

Enterprise Used Auto Sales Event
Saturday, February 9, 2008
Angel Stadium of Anaheim
9:00 a.m. - 5:00 p.m.

*Annual Percentage Rate (APR). Loan approval subject to income and credit evaluation. Certain terms and conditions apply. Rate includes 1% discount for automatic payment.

WFS Asset Maximizer Account Offers Higher Rates!

Earn as high as a 3.50% APY on a WFS Asset Maximizer Account. To open an AMA call 1-888-4WESCOM today.

Conditions apply. Please ask for details.

Investment products and services offered through Wescom Financial Services, LLC (WFS), a Registered Investment Advisor, broker-dealer, and a wholly owned subsidiary of Wescom Credit Union. Registered Representatives are employed by Wescom Credit Union and registered through WFS (Member FINRA/SIPC).

Investments are not NCUA/NCUSIF insured, not Credit Union guaranteed, and may lose value.

REGULAR SAVINGS 00

Dividends Earned In 2008: \$0.09

Dividends Earned In 2007: \$1.50

Account Ownership: PATRICK FOURMY / Authorized Signer, SHARON PALMER / Authorized Signer

Beginning Balance	+	Deposits & Other Credits (1)	-	Withdrawals & Other Debits (0)	=	New Balance
		\$0.09		\$0.00		

Trans Date	Effective Date	Transaction Description	Amount	New Balance
01/31		Beginning Balance		
		Dividend Earned	0.09	

REGULAR SAVINGS 00 (CONTINUED)

Trans Date	Effective Date	Transaction Description	Amount	New Balance
Annual Percentage Yield Earned (APYE) For Period: 0.530%				

FREE CHECKING 01

Dividends Earned In 2008: \$0.00

Dividends Earned In 2007: \$0.00

Account Ownership: PATRICK FOURMY / Authorized Signer, SHARON PALMER / Authorized Signer

Beginning Balance + Deposits & Other Credits (0) - Checks Cleared (20) - Withdrawals & Other Debits (4) = New Balance

Trans Date	Effective Date	Transaction Description	Amount	New Balance
01/01		Beginning Balance		
01/01		Check # 001456	-150.00	
01/02		Check # 001454	-105.00	
01/03	01/02	Check # 001449	-575.00	
01/03	01/02	Check # 001457	-2,400.00	
01/03		Check # 001120	-500.00	
		Withdrawal ACH BANKCARD ACH1	-130.00	
01/03		TYPE: MTOT DISC CO: BANKCARD ACH1		
		Withdrawal ACH BANKCARD ACH1	-130.00	
01/03		TYPE: MTOT DISC CO: BANKCARD ACH1		
		Check # 001123	-5,000.00	
01/03		Check # 001124	-2,800.00	
01/04	01/03	Check # 001448	-150.00	
01/04	01/03	Check # 001434	-90.00	
01/04	01/03	Check # 001453	-85.00	
01/09		Check # 001452	-35.00	
01/10		Check # 001459	-153.00	
01/14		Withdrawal ACH NEOS MERCHANT SO	-50.45	
		TYPE: FEES CO: NEOS MERCHANT SO		
01/14		Withdrawal ACH NEOS MERCHANT SO	-50.45	
		TYPE: FEES CO: NEOS MERCHANT SO		
01/14		Check # 001458	-29.95	
01/17		Check # 001398	-8,000.00	
01/19		Check # 001464	-1,000.00	
01/22		Check # 001461	-51.67	
01/22		Check # 001463	-12.21	
01/23		Check # 001462	-59.90	
01/28		Check # 001359	-5,000.00	
01/28		Check # 001360	-2,800.00	

Summary of Cleared Checks

Check #	Date Cleared	Amount	Check #	Date Cleared	Amount	Check #	Date Cleared	Amount
001120	01/03	500.00	001123*	01/03	5000.00	001124	01/03	2800.00
001359*	01/28	5000.00	001360	01/28	2800.00	001398*	01/17	8000.00
001434*	01/04	90.00	001448*	01/04	150.00	001449	01/02	575.00
001452*	01/09	35.00	001453	01/04	85.00	001454	01/01	105.00
001456*	01/01	150.00	001457	01/03	2400.00	001458	01/14	29.95
001459	01/10	153.00	001461*	01/22	51.67	001462	01/23	59.90
001463	01/22	12.21	001464	01/19	1000.00			

* Asterisk next to number indicates skip in number sequence.

